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April 6, 1988

Mr. Barry Grossman  
Chief, Communications and Finance Section  
Antitrust Division  
United States Department of Justice  
555 4th Street, N.W.  
Washington, D.C. 20001

Dear Mr. Grossman:

Re: Southwestern Bell Corporation's Divestiture  
of Its Interest in Cycomm Corporation

I have received your letter of March 18, 1988, in which you have advised Southwestern Bell Corporation ("SBC") that it must, by April 17, 1988, either divest its interest in Cycomm Corporation or seek leave from the Court. As you know from my letter of February 17, 1988, to Ms. Garrison, SBC does not agree with your position that its small ownership interest in Cycomm makes it an affiliated enterprise in the absence of actual or effective control.<sup>1</sup> SBC agrees, however, that it should obtain a judicial resolution of this and of the other legal and factual issues relevant to the permissibility of an investment in Cycomm under the MFJ. SBC therefore will follow your directive by divesting itself of the investment within thirty days. After divestment, SBC will initiate appropriate filings with the Department and with the Court to seek judicial approval of a reinvestment in Cycomm.

The mechanics of its divestment will work as follows: SBC, with the concurrence of Cycomm, proposes to return the shares to Cycomm for cancellation. Cycomm, in turn, will issue non-transferable warrants to SBC, effective for thirty-six months, that are to become exercisable at a

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<sup>1</sup>I previously informed you that SBC's ownership in Cycomm is 21.5%. Cycomm will issue new shares on or about April 12, 1988; this issuance will substantially reduce SBC's ownership. I can provide you with an exact percentage after Cycomm completes the new sale.

nominal price if SBC successfully secures approval to invest again in Cycomm.<sup>2</sup> During this thirty-six month period, SBC will seek clarification from the decree court of the lawfulness of a direct ownership of all or of some smaller portion of the interest it previously held in Cycomm. If SBC fails to obtain the necessary relief within thirty-six months, the warrants would simply expire.

SBC will not be able to influence Cycomm's management during this period nor will it have a financial stake in the company (unless, of course, the lawfulness of the investment is clarified in some way and the warrants are exercised). SBC now has a right to nominate one out of nine members of the Board of Directors. SBC's nominee, Richard A. Harris, resigned his position immediately after Judge Greene's clarification of the MFJ manufacturing prohibition and the position has since remained vacant. Under the proposal advanced herein, SBC would forego not only this Board position but also its shareholder voting power as well. And SBC will have no right to dividends accrued or accumulated during the period beginning with the cancellation of the shares and ending, if at all, with a repurchase of shares through the exercise of the warrants.

We would appreciate receiving the Department's approval for holding the proposed warrants under the guidelines established by the Court's August 7, 1986, Memorandum Order for conditional interests. The warrants meet the standards the Court established because (1) the potential investment represented by the warrants is relatively minor, (2) the exercise of the warrants is subject to a genuine contingency, and (3) SBC lacks both the ability and the incentive to disadvantage Cycomm's competitors. Pursuant to the procedures adopted by the Department for the approval of a conditional interest, this letter is accompanied by an affidavit from Robert A. Dickemper, Vice President-Strategic Planning. The arguments for approving the holding of the warrants as a permissible conditional interest are summarized below:

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<sup>2</sup>My letter of February 17, 1988, outlined a slightly different procedure whereby Cycomm would hold the shares as treasury shares rather than cancelling them and issuing warrants. Treasury shares are no longer possible under the Oregon incorporation statute, however, and counsel for Cycomm has suggested the issuance of non-transferable warrants as a substitute.

The Investment is Relatively Minor.

SBC has annual revenue of approximately \$8 billion and a net income of over \$1 billion. In comparison, it acquired its original interest in Cycomm for less than \$1.5 million. The Court has approved a \$10 million conditional interest investment by NYNEX, a company of similar magnitude to SBC.

The Occurrence of the Contingency is Genuinely in Question.

The contingency in this instance relates to SBC's ability to obtain approval for a direct investment in Cycomm. SBC's interpretation of the MFJ is the subject of some dispute and may not be accepted by either the Department, the District Court, or an appellate court. The contingency upon which exercise of the warrants is based is therefore genuinely in question.

SBC Clearly Lacks the Ability, or the Incentive, or both, to Disadvantage Cycomm's Competitors.

Cycomm engages in the research and development of encryption devices used in connection with radio communications equipment and telecommunications terminal equipment ("CPE"). These devices are CPE which attach directly to the transmitting instrument and scramble the emitted signal before it is sent over the air or before it enters the landline telecommunications network. At the message's destination, another encryption device must be used to unscramble the signal after it is received. The transmission of the encrypted message itself is identical to the transmission of an unencrypted message and, in the relevant case of terminal equipment connected to the landline telecommunications network, the local exchange carrier (and the interexchange carrier if the call is long distance) provides no special equipment or special handling. SBC's operating telephone company, Southwestern Bell Telephone Company ("SWBT"), is therefore not in a position to disadvantage vendors of competing encryption devices. Moreover, after cancellation of the shares, SBC will have no right as a shareholder or a director to information about Cycomm or its products. The network design functions of SWBT could not, as a consequence, be adapted to give an advantage to Cycomm encryption products.

More importantly, the field of encryption has rapidly growing markets and rapidly changing technology. SBC made a strategic investment in Cycomm in order to provide a vehicle by which it can keep abreast of the dynamic environment in which this specialty product is developing. As a major provider of CPE, through its subsidiary Southwestern Bell Telecommunications, Inc., SBC has an economic incentive to provide its CPE customers with

a marketing program that includes the best encryption devices available. And as one of the largest cellular telephone companies in the country, through its subsidiary Southwestern Bell Mobile Systems, Inc., SBC has a similarly strong incentive to provide its cellular customers with access to the best cellular encryption devices available. SBC does not have an incentive to use Cycomm encryption products to the exclusion of others if, in the ensuing months and years during which the technology will continue to evolve, Cycomm cannot produce a product competitive with products produced by other encryption companies. The stake SBC has in providing cellular telephone service and in providing CPE in intensely competitive markets dwarfs the small investment that would be represented by the Cycomm warrants.

#### Conclusion

SBC requests the Department to approve the divestment of its direct ownership interest in Cycomm through a conversion to a conditional interest represented by the warrants described above. This conversion meets the Court's requirements for conditional interests and will permit SBC to pursue the possibility of permanent relief for a direct investment. Thank you for your attention to this matter.

Very truly yours,



Attachment

AFFIDAVIT OF ROBERT A. DICKEMPER

1. My name is Robert A. Dickemper. I am Vice President-Strategic Planning for Southwestern Bell Corporation ("SBC"). My address is One Bell Center, Suite 4107, St. Louis, Missouri 63101.

2. SBC now owns 21.5% of the voting interest of Cycomm Corporation, an Oregon Corporation. Cycomm is about to obtain new financing, in which SBC will not participate, and which will substantially reduce SBC's ownership interest. The exact effect of the new financing will not be known until the shares are sold on or about April 12, 1988.

3. Cycomm engages in the research, development and sale of encryption devices used in connection with radio communications equipment and telecommunications terminal equipment ("CPE"). These devices are CPE which attach directly to the transmitting instrument and scramble the emitted signal before it is sent over the air or before it enters the landline telecommunications network. At the message's destination, another encryption device must be used to unscramble the message after it is received. The transmission of an encrypted message is identical to the transmission of an unencrypted message and, in the relevant case of terminal equipment connected to the landline telecommunications network, the local exchange carrier (and the interexchange carrier if the call is long distance) provides no special equipment or special handling.

4. SBC is entitled to elect one of nine members of the Board of Directors. SBC's director, Richard A. Harris, resigned his position immediately after Judge Greene's clarification of the MFJ proscription of manufacturing. The position has since remained vacant.

5. SBC plans to divest itself of its investment in Cycomm by April 17, 1988. This divestment will work as follows: SBC will, with the concurrence of Cycomm, return its shares to Cycomm for cancellation. Cycomm will then issue non-transferable warrants to SBC, effective for thirty-six months, that are to become exercisable at a nominal price but only if SBC obtains approval under the MFJ to invest again in Cycomm.

6. During the period in which SBC holds the warrants, SBC plans to take steps toward securing approval under the MFJ for an investment in Cycomm.

7. SBC will not have access to information not otherwise available to the public about Cycomm or its products. It will not be a shareholder in Cycomm and, as such, will not receive annual reports, proxy statements, or any other material distributed by Cycomm to its shareholders.

8. SBC will not receive dividends during the period in which it holds the warrants. Even if the warrants are ultimately exercised, SBC will not receive dividends accumulated or accrued during the period in which it held them.

9. SBC's annual operating revenue is approximately \$8 billion and its annual net income is approximately \$1 billion. It acquired its original interest in Cycomm for less than \$1.5 million, making it an investment of relatively minor magnitude.

10. The exercise of the warrants is subject to a genuine contingency, viz., securing approval under the MFJ for an investment in Cycomm.

11. SBC's operating telephone company, Southwestern Bell Telephone Company ("SWBT"), does not have the ability to disadvantage competitors of Cycomm. The transmission of an encrypted message is identical to the transmission of an unencrypted message; a local exchange carrier provides no special equipment or services. Moreover, neither SBC nor SWBT will receive any information about Cycomm or its products during the period in which SBC holds the warrants. The network design functions of SWBT could not, as a consequence, be adapted to give an advantage to Cycomm encryption products.

12. SBC does not have an incentive to disadvantage the competitors of Cycomm. SBC's principal economic incentive is to provide the customers of its subsidiaries with the best encryption devices available. Its major stake in the local exchange, cellular and equipment markets dwarfs the small investment it has made in Cycomm and it therefore has little incentive to use Cycomm products unless they are competitive with the encryption products of competing firms.

FURTHER, affiant sayeth not.

Robert A. Dickemper  
Robert A. Dickemper

STATE OF MISSOURI     )  
                              )  
CITY OF ST. LOUIS     )

On this 4th day of April, 1988,  
before me Barbara J. Souton, a Notary Public in and for  
said state, personally appeared Robert A. Dickemper, Vice  
President-Strategic Planning known to me to be the person  
who executed the within "Affidavit" in behalf of  
Southwestern Bell Corporation and acknowledged to me that he  
executed the same for the purposes therein stated.

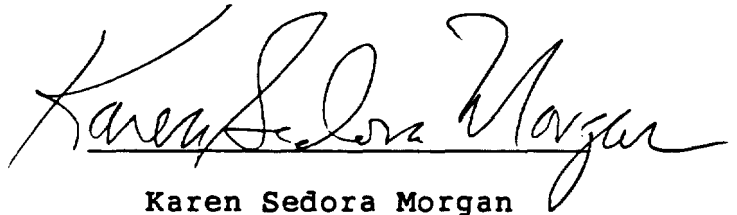
Barbara J. Souton  
NOTARY PUBLIC

My commission expires: August 19, 1989



CERTIFICATE OF SERVICE

I, Karen Sedora Morgan, one of the attorneys for the United States, hereby certify that I have on this day caused the REPORT OF THE UNITED STATES CONCERNING THE PROPOSED RETENTION OF A CONDITIONAL INTEREST BY SOUTHWESTERN BELL CORPORATION to be served on defendants and intervenors who have filed comments or participated in post-divestiture proceedings prior to June 28, 1985, by mailing a copy, postage prepaid, to each of the individuals and organizations on the attached service list.

A handwritten signature in cursive script, reading "Karen Sedora Morgan", written over a horizontal line.

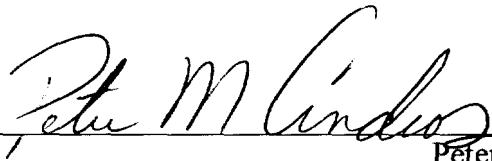
Karen Sedora Morgan

Dated: April 15, 1988

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of February, 2000, I caused true and correct copies of the foregoing Opposition of AT&T Corp. to Applicants' Proposal Regarding GTE's InterLATA Operations be served on all parties via first class mail, postage prepaid, or better, to their addresses listed on the attached service list.

Dated: February 15, 2000  
Washington, D.C.

  
\_\_\_\_\_  
Peter M. Andros

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